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CC:PA:LPD:PR(REG-159704-03)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington DC 20044

Subject: Comment on Proposed Amendments to 20 CFR part 901, Relating to Enrolled Actuaries

Dear Joint Board for the Enrollment of Actuaries:

This comment pertains to proposed §901.20(b)(3), which states: “An enrolled actuary, upon learning of another enrolled actuary’s material violation of this section, shall report the violation to the Executive Director.”

I recommend (i) that the following or similar words be inserted at the end of the subsection “unless exempt in accordance with subsection (4), below”; (ii) that subsection (4) state that enrolled actuaries are exempt from the mandatory reporting requirement if they fall within specific categories; and (iii) that subsection (4) list legitimate bases on which enrolled actuaries are exempt from the requirement.

One category of exemption would be “if the enrolled actuary is prohibited by law from reporting the violation.”

Another category would be “if the enrolled actuary was made aware of the other enrolled actuary’s material violation solely through the potential reporting actuary’s role in the discipline process of an incorporated organization.” This exemption is requested because an enrolled actuary who learns of an apparent material violation solely as a result of such actuary’s participation in the discipline process will typically be prohibited from disclosing the violation except as a result of the discipline process. Disclosure outside the discipline process would typically violate the organization’s confidentiality rules, arguably damage the reported actuary’s ability to practice before the discipline due process is completed, and could subject the reporting actuary and the organization to potential liability. This proposed requirement would have a chilling impact on enrolled actuaries with roles in a discipline process.

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The second proposed exemption above would include enrolled actuaries who are discipline committees or discipline board members; appointed investigators; executive directors, presidents, or other staff responsible for transmitting discipline committee reports.

I thank the Board for the opportunity to provide these comments, and am available to discuss them if desired.

Respectfully submitted,

Robert J. Rietz